



UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOHN MICHAEL ALLINGER,)	
)	
Plaintiff,)	03:06-CV-00139-LRH-VPC
)	
v.)	
)	<u>ORDER</u>
E.K. MCDANIEL, DEBRA BROOKS, JOHN)	
MESSICK, GLEN WHORTON, JERRY)	
BAINBRIDGE, and WADE SMIT,)	
)	
Defendants.)	
_____)	

Presently before the court is the Report and Recommendation of U.S. Magistrate Judge Valerie P. Cooke (# 42¹) entered on June 8, 2007, recommending that Defendants' Motion to Dismiss (# 28) be granted in part and denied in part. Plaintiff filed his Objection to Magistrate Judge's Report and Recommendation (# 43) on June 25, 2007, to which Defendants subsequently opposed (# 46). Defendants also filed an Objection to Magistrate Judge's Report and Recommendation (# 44) on June 25, 2007. No opposition was filed. Also before the court is Defendants' Motion to Strike Plaintiff's Exhibit A (# 45). No opposition has been filed.

The court has conducted a *de novo* review and has fully considered the objections of the parties, the pleadings and memoranda of the parties, and other relevant matters of record pursuant

¹Refers to the court's docket number.

1 to 28 U.S.C. § 636(b)(1) and Local Rule IB 3-2. As a result of this review, the court determines
2 that the Magistrate Judge's Report and Recommendation (# 42) should be adopted and accepted
3 with the exception of the following modification. Because defendant MacArthur is no longer
4 employed by the Nevada State Prison System, Defendants' motion will be granted as to defendant
5 MacArthur in his official capacity for injunctive relief.

6 With respect to Defendants' Motion to Strike, the court finds some relevance to
7 Plaintiff's Exhibit A. Therefore, Defendants' motion will be denied.

8 IT IS THEREFORE ORDERED that the Magistrate Judge's Report and
9 Recommendation (# 42) is ADOPTED and ACCEPTED. Defendant's Motion to Dismiss (# 28) is
10 hereby GRANTED in part and DENIED in part. Defendants' motion is granted as to counts I, II,
11 IV and V, as to defendant MacArthur in his official capacity for money damages and injunctive
12 relief, and as to defendant D'Amico. Defendants' motion is denied as to count III and defendant
13 MacArthur in his individual capacity.

14 IT IS FURTHER ORDERED that Defendants' Motion to Strike Plaintiff's Exhibit A (#
15 45) is hereby DENIED.

16 IT IS SO ORDERED.

17 DATED this 26th day of September, 2007.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE